



**MINUTES OF THE GILA COUNTY
PLANNING AND ZONING COMMISSION**

June 18, 2020

10:00 A.M.

REGULAR MEETING

1. The meeting was called to order at 10:00 A.M. by Chairman Mickie Nye.
2. Pledge of Allegiance was led by Commission Terry Otts.
3. Roll Call: Shealene Loya called the roll; Chairman Mickie Nye (Present), Travis Holder (Present), Lori Brown (Absent), Brian Goslin (Present), Terry Otts (Present), Randy Slapnicka (Present), Mary Lou Myers (Present), Jim Muhr (Present) and Pamela Griffin (Present). A quorum was present.

Community Development Staff Members Present: Scott Buzan-Director, Michelle Dahlke-Senior Planner, Shealene Loya-Administrative Assistant, Darde de Rouhlac-Floodplain Administrator, Randy Pluimer-Chief Building Official, Clayton Johnson-Construction Project Manager, Jake Garrett-Wastewater Manager, Homer Vela-Deputy County Manager and Jeff Dalton-County Attorney.

4. Review and Approval of the Planning and Zoning Minutes on May 21, 2020. Chairman Nye asked if there were any changes needed to the minutes. No changes were suggested. Commissioner Myers motioned that the minutes be approved as is and Commissioner Jim Muhr seconded the motion. The motion was unanimously approved.
5. **Director/Planner Communication:** At any time during this meeting of the Planning and Zoning Commission, the Director and/or Planner of Community Development may present a brief summary of current events. No action may be taken.

EXECUTIVE SESSION

Information/Discussion/Action:

Public Hearing:

6. **CUP-20-01 LEVI LUSTER (OWNER) / MICHAEL LUSTER (APPLICANT)**- A request to allow a three-story, 34 foot tall building height (measured from the grade level to the mean height between the eaves and ridge for gable and hip roofs per the Gila County Zoning Ordinance) for a new single-family residence where the maximum building height permitted is two stories and 30 feet. The property is located at 645 West Scott Drive (Lot 44 Whispering Pines Plat # 6) (APN 302-16-138A).

Chairman Nye introduced item CUP-20-01.

Mr. Buzan stated that everyone's thoughts and prayers were with those folks who reside in the communities of Tonto Basin, Punkin Center and Jake's corner and for the firefighters who were working the Bush Fire. He stated that Commissioner Brown was forced miss the meeting because she was in the process of evacuating her animals from her ranch. He stated that he had mentioned he would bring to the Commission at this meeting the status or results of passage and previous items the Commission had heard but suggested discussing this at the next Commission meeting to give more time for Case Number CUP-20-01. He indicated that the Board of Supervisors approved a new general-purpose building with a 2,000 square foot conference room that can hold up to 100 people which is targeted for construction in November of 2021.

The Commission meeting was adjourned to go into Executive Session.

The Commission meeting was opened to discuss CUP-20-01.

Mr. Buzan explained that CUP-20-01 was continued by the Commission at the May 21st meeting. He stated that he would not be making a new presentation but that Shealene Lola and Michelle Dahlke prepared an agenda packet with over 100 pages for review. Mr. Buzan informed the Commission of various staff members present to answer questions including Clayton Johnson – grading and drainage specialist with Public Works, Jake Garrett – Wastewater Manager, Randy Pluimer – Chief Building Official and Darde Deroulhac - Floodplain Manager. He explained that are members of the public who were attending the meeting by audio.

Chairman Nye stated that he wanted the Commissioners first to ask questions of staff and then open the meeting up to the public. He stated that when the public does speak, he asked for the public to try to only present new comments not addressed at the prior meetings. He stated that the issue at hand is the number of stories and the height of the building and that questions around the septic tank and the setback of the house were not items to be considered by the Commission.

Mr. Buzan introduced Darde Deroulhac to answer floodplain questions. Commissioner Muhr asked Mr. Deroulhac what the height of the stem wall was on the original plans and what the current height of the stem wall was. Mr. Deroulhac indicated the height of the stem wall shown on the plans was about 4 ½' when it should have been 6' to meet floodplain requirements and the current height of the stem wall is about 9'. He said the plans were passed because the resubmitted plans indicated the stem wall was above the elevation required so the plans were approved.

There was clarification made by staff on where the different elevations of the home were located in the Commission packet.

Commissioner Slapnicka asked at what time did staff miss the increased building height on the plans. Mr. Buzan explained that staff did not catch the increased building height on the revised plans at the counter.

Commissioner Muhr asked who reviews plans at the counter and what training does this person have to review plans. Mr. Buzan stated that it was a permit technician who is at the counter who receive training so they understand how to review plans at the counter including internal training approved by the International Code Council and Arizona building officials and that they take a 2-day permit technician class.

Chairman Nye stated that he would like to focus on the issue at hand and not necessarily who made a mistake or personnel issues.

Commissioner Muhr stated that he just wanted to understand how the error occurred in the first place.

Mr. Buzan stated that staff has added more layers of review than what they had previously and that today, any residential plans that are submitted that are obviously more than one story are now reviewed by the permit technician and then must be signed off by a supervisor as well. Mr. Buzan stated that in the Luster's plans, the draftsman actually put on the plans the measurement from the peak to finish floor of 30 feet where most architects and draftsmen provide the full height of the building. He explained that staff has been trained to not accept that way of showing building height.

Commissioner Myers stated that she had some concerns over the truss change and asked when that issue came into the picture and how it has created more issues with this as far as building heights is concerned.

Mr. Buzan stated that the Lusters did change the design of the trusses. He explained that the pitch remained the same, still a nine 12 pitch, and from the calculations staff received, the new trusses were approximately two inches less in height than the original trusses and that the only real change in the new trusses other than a different trust company was that the new trusses were scissor trusses with a vaulted ceiling inside a nine 12 pitch.

Chairman Nye opened the meeting to the public.

Heidi Swatty (289 Roundup Way): Ms. Swatty indicated she was a full-time resident of Whispering Pines and that her family has owned several homes in Whispering Pines over the past 35 years. She said she currently lives in a legal two-story house on 1.3 acres. She stated that she understood that the Commission will be deciding on whether to allow the three stories and height violations of this house to remain and if the Commission decides to rule with the Luster family and allow the three stories and height violations to remain, it will be changing the zoning laws in her neighborhood forever.

Ms. Swatty stated that approving the CUP would set a legal precedence in her neighborhood. She stated that none of the Commissioners live in Whispering Pines and their decision would never affect them personally but that it would affect her and the neighbors. She said she also understands that it is the job of Gila County to mitigate potential losses due to imminent lawsuits but that the County made several mistakes and omissions due to oversights, lack of training, et cetera. She said that she believed the Lusters are to blame because their family business is building custom homes and that they are aware of the zoning laws in the neighborhood and that they realized at some point that Gila County was asleep at the wheel and used that opening to build an illegal third story on their house that exceeds the height law and zoning laws. She said she believed the Lusters and their architect knew this. She said she was told by someone who worked on the house that the Luster's planned on building an additional two bedrooms and bathroom on the third story, after the permit process was completed and that this would allow further illegal violations in the neighborhood.

Ms. Swatty stated that if the County allows the third story to remain it would further perpetuate illegal building in the neighborhood. She also indicated concerns with the floodplain and the septic tank on the property. She said she knew the Chairman asked the public not to speak about those issues, but she wanted her concerns on the records. She said she was also concerned that the

property is one of the smallest lots in Whispering Pines and that the Lusters have built an almost 3,000 square foot house on a postage size lot.

Ms. Swatty stated that the Luster's have never answered questions related to the septic tank and leach field that were installed 31 years ago and that the septic system was installed originally to support an RV trailer as there has never been a home built on this lot and now the septic system that's over 31 years old has to support a 21 fixture house with potentially one more illegal bathroom added. She stated that Gila County requires that a certificate form is submitted by a septic company who may or may not have completed an actual inspection on the septic system. She says she has asked for a copy of something from the septic company who inspected the system but was told the County does not have anything on file from that company on their letterhead, just a handwritten form that was filled out.

Ms. Swatty asked that the County obtain an inspection report from the septic company so there is proof that an inspection was conducted.

Ms. Swatty asked the Commission if any of them had decided prior to the meeting on whether or not to allow the violations to remain. Each of the Commissioners answered no.

She also asked if the Commissioners agreed that the Luster home violates the County's building height and stories restrictions.

Chairman Nye stated that he does not believe the Commissioners have to answer that question but that the Conditional Use Permit is a tool that the Luster's are using to exceed the County's building height and stories requirements.

Commissioner Slapnicka asked Ms. Swatty where she lives in relation to the Luster's home. She replied that she lives three fourths of a mile from Scott drive and that she drives by the property whenever she comes and goes from Whispering Pines.

Mr. Buzan stated that the Planning and Zoning Commission can make a recommendation to the Board of Supervisors to approve, deny, or send the Conditional Use Permit request back to staff for more information and that the Board of Supervisors will meet on July 28th.

Ted Schmidt (642 Scott Drive): Mr. Schmidt asked if people would be able to attend the Board of Supervisors meeting and if people will be notified about it. Mr. Buzan stated that the meeting will be held in Globe and broadcast to Payson using ITV. The agenda for the meeting will also be posted and on the County's website by the Clerk of the Board.

Mr. Schmidt explained where he lives in relation to the Luster's house. He stated that when he came to the property 25 years ago, he was a realtor and remembered the Luster home on the market at that time. He said that he could remember three distinct times during that period when other realtors took clients to the property that it was determined that the lot could not be used with the septic system that existed. He said environmental regulations have not decreased since then so he does not know how the septic tank can be used now. He stated that there is no way that this septic tank would be approved today. He also stated that no one in the area got a letter regarding the setback for the house even though the County said they sent one out. He also said the first thing the Luster's did was put two trailers on their property which is in violation of CC&Rs.

He stated that the Lusters are demonstrating a certain attitude towards the neighborhood area. He said he agrees with what Heidi Swatty said about people trying to get away with things and that they put a massive ugly structure on a tiny lot.

Michael Hatfield (631 West Scott Drive): Mr. Hatfield indicated that he did not get notification about the hearing and he is located within 300' of the Luster property but that was not why he was at the hearing. He indicated that there is a typed letter in the Luster application materials that is signed by Mike Luster that says he was unaware of the height issue until 4/9/20. He said that statement was faulty and if so, would that not void the Conditional Use Permit application?

James McCracken (641 West Scott Drive): Mr. McCracken stated that it was his understanding that originally, when the Lusters wanted to build the house that they wanted to be about 120 feet from the road, consistent with his house, and they were told they couldn't because of the flood zone and that now they have a nine foot concrete wall and if they could have built in the middle of the creek where they originally wanted to, a lot of the problems would be solved. He also stated that the septic has never been really proven that it would work where it is located in the floodplain and that the County floodplain staff has told him it does not flood in the area. He said he has seen it flood at least three times from his front porch to at least three-foot-deep in the road. He said he asked an inspector why they were having the Luster's build in the middle of the flood zone; he said the inspector said he did not care and drove off and that was concerning to him. He said he thinks the Luster's have been above board and want to have a place within the community and are going to be good neighbors but he said if the Luster's were trying to deceive the County, it is the County's responsibility to keep them in check.

Commissioner Slapnicka asked Mr. McCracken the height of this house and he responded that he did not know but it was one story.

Mr. McCracken stated that there is flooding in the area that comes from Bear Creek that floods up to his front steps and he is concerned because he said the Luster's septic tank is within 40 feet of his well according to the drawings.

Commissioner Myers asked Mr. McCracken how he was able to build his house as far back as he did, and he replied that he bought the house when it was already built, and it was built a long time ago.

Patrice Abbott (461 Scott Drive): Ms. Abbott stated that she lives up the hill from the Lusters but drives by the house every day. She thanked the Commissioners for taking the time to go out and look at the situation and said they have felt overlooked and abused.

She said that no one received any notification that the house was going to be constructed where it was, and it was not until the framing of the house that they called the County to see what was going on regarding the height issue. She said she called the County and was told that house was permitted for two stories and so she said she told the County there were three stories going up.

She indicated that had the neighborhood been involved from the beginning, that this all could have been worked out. She said the neighbors have been overlooked to the point that after she made that call and raised a red flag about the height of this house and neighbor concerns, then it was determined that the County had made a mistake, she said she was told "We're only human. We made mistakes. Haven't you ever made a mistake?" She said she was never so insulted in her life. She stated that the County picks on Whispering Pines when no one said anything about the Luster house until she called the County about it.

Mrs. Abbott said that she contacted the County again when she saw the house being skinned before having the meeting about the Conditional Use Permit. She said this had all been a bad experience for their neighborhood and that they have been abused and that the neighbors are going to stand up for

themselves. She asked the Commission to think of the many families impacted rather than just the one.

Michael Porter (407 West Scott Drive): Mr. Porter said he purchased his home in 1991. He said he was a retired certified residential appraiser in the state of Arizona and if he was doing an appraisal on the Luster home, he would have to list it as nonconforming, which loan companies do not like. He said the reason it's nonconforming is because it's in an area of one- and two-story homes and would lower the assessed value of the homes in the area listing adverse conditions which he said he is required to do.

Mr. Porter explained that this will also affect the comparable sales in the area that appraisers will use to assess other homes and he stated that overall property values will go down and he does not want to see that happen.

John Collins (North Houston Mesa Road): Mr. Collins said that said he bought a few extra lots near his own and was told he would have to put in an alternative septic system because he was so close to the river and that allowing the existing septic on the Luster property would set a negative precedent in the area.

Dan Abbott (461 Scott Drive): Mr. Abbott indicated that just because there were other people in the room who were choosing not to speak, it did not mean they were not concerned but that there are several people who felt that their concerns had already been addressed and the Chairman wanted to keep it brief and succinct.

Mr. Abbott said he was concerned that the Lusters have continued to work on their home even though the Conditional Use Permit process has not yet complete and that the Lusters have not only skinned the roof but have framed in all the windows too and that construction is still ongoing. He also said that the Lusters said at the neighborhood meeting that they were going to remove construction materials from the street but that has not happened yet. He said the Lusters have shown nothing but disregard the community and to the Commission, by ignoring any kind of statements that may have been made to them about the problems the neighbors have.

Mr. Abbott said it is the hope of the neighbors that the Commission will make the Lusters reduce the home back to the two stories that they said they were going to build. He said that if the Lusters wanted a garage, then they should have taken off the second story livable space so that they had a 2-story home.

Teresa Richardson (3261 N. Neil Drive): Mrs. Richardson stated that when someone builds a custom home like this, they hire an architect who would have looked at the code and that they would know exactly that it's supposed to be no more than two stories and no more than 30 feet in height. She said that she believed the Lusters knew the County was dropping the ball and they took advantage of that situation. She said that when Mrs. Luster spoke at the community meeting, she said that flood control made them go up to a nine-foot stem wall, which was completely incorrect because County flood control does not base it on height. They base it on an elevation and that elevation has never changed from day one.

She stated that it's pretty apparent in the building code that a story is considered anything over four and a half feet tall and that if you look at the architectural plans, the architects that they hired unfortunately did not provide very clear dimensions. She said she did not know if that was on purpose or not but that she believes that the Lusters have a lot of culpability in the situation. She said that when the Lusters were told about the height issue, they should have stopped construction and

worked with the County and that the Lusters have the obligation to mitigate their damages. She said she hoped that the Commission would decide not to allow this, or it will definitely stand as a monument to the County's gross incompetence.

Elizabeth Ann Brannigan (642 West Scott Drive): Ms. Brannigan stated that the Lusters have ruined their property values. She stated that the Lusters had the laborers working nonstop to get the house completed before the public meetings and that the construction was very disruptive. She stated that she called the County to see if there was a stop work order. She said she told Mr. Luster that his house was lowering her property values and said Mr. Luster told her that his house would increase her property values.

A question was raised regarding if there would be a hearing regarding the septic tank. Mr. Buzan stated that anyone can contact Jake Garrett, Wastewater Manager. He stated that Mr. Garrett was at the Commission meeting listening to the septic comments but that the Commission meeting was not the venue to discuss septic issues.

Michael Luster (645 Scott Drive): Mr. Luster stated that in the last meeting that they gave a lot of details and that he was going to provide a recap from the very beginning - before they bought the property. He said they went to the flood plain department and talked to them about what they could and couldn't do and that they gave them the parameters of where to build and the building height and they went to the County and got all of the information that they needed. He said they then provided the information to their draftsman and the draftsman submitted everything to the County and then they got a permit.

Commissioner Slapnicka asked how long Mr. Luster has been in the business of building homes. Mr. Luster stated that he has never been in the business. Commissioner Slapnicka asked Mr. Luster if he had a construction company and Mr. Luster replied that he was not in the business but that his son is.

Commissioner Slapnicka stated that he stepped out of the meeting and made a call to Long Design and that they said they knew the Lusters were over the height limit. Mr. Luster said they never told him that. Commissioner Slapnicka said that they acknowledged on the phone that they were over the height limit when the house was built.

Commissioner Slapnicka stated that it was disconcerting that the architect would know that he's over the height limits but still tried to push it through the County. Mr. Luster stated that was never communicated to him.

Mrs. Richardson asked to make an additional point. She asked if a Commissioner just spoke to the project architect. She stated that there is no architect who does not know their building heights when they start their drawing and working with customers. She stated that if this was a building code violation who did something purposefully against a building code violation, no one would be having this discussion right now and further stated that Mr. Luster does not want to take any responsibility whatsoever, but at this point, it's the architect's responsibility to deal with the mess that actually he's created. She said she thinks the house needs to come down to the two-story height limit and 30-foot maximum height.

Mr. Schmidt stated that the owner is the ultimate responsibility for everything. It's not a designer nor a builder.

Chairman Nye stated that the Commission has several options or choices and that he believed the Commission needed to look at this from the perspective of what would they have done if this structure has not been built.

Mr. Buzan asked to take a quick 5-minute break.

Chairman Nye resumed the meeting after the break. He thanked everyone and said he wanted to make sure that everybody had an opportunity to speak who really wants to say something. Chairman Nye said that the Commission is supposed to make decisions based on the testimony presented at this meeting and the previous meetings held. He stated that the Commission really needed to focus on the issue of the building height and the number of stories.

Chairman Nye stated that he absolutely trusted Commissioner Slapnicka but did not know that the conversation between Randy and the architect should be considered by the Commission because it was a conversation that took place between Commission Slapnicka and the architect and not with the Commission.

Commissioner Holder said his recommendation was to make a motion to approve the Conditional Use Permit request with the stipulation that the third story, being the garage on the bottom, is used as a garage and storage and not as living which would make the structure a two-story structure.

There was not a second to Commissioner Holder's motion.

Commissioner Slapnicka made a motion that the Commission deny the CUP and that he must conform to the County code.

Commissioner Myers seconded the motion.

Chairman Nye asked for a roll call vote: Chairman Nye (aye), Commissioner Holder (nay), Commissioner Goslin (nay), Commissioner Myers (aye), Commissioner Slapnicka (aye), Commissioner Muhr (aye), Commissioner Otts (aye), Commission Griffin (abstained) and Lori Brown (absent).

Chairman Nye asked for a motion to adjourn. Commissioner Myers made the motion and Commissioner Holder seconded the motion. All in favor to adjourn.